

UTILITY PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 10/750,550 Confirmation No. 5589
Applicant : Raj Bridgelall
Filed : 12/31/2003
TC/A.U. : 2618
Examiner : Rego, Dominic E.
Docket No. : 022.0028 (1615)
Customer No. : 29,906

Application for Patent Term Adjustment filed under 37 C.F.R. § 1.705(b)

Box AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
*****Electronically Filed***

Commissioner:

This is an Application for Patent Term Adjustment filed under 37 C.F.R. § 1.705(b) and MPEP § 2734. It is being filed concurrently with the payment of the issue fee, and is accompanied by the appropriate fees under 37 C.F.R. § 1.18 (f).

Statement of Facts Involved

The following recitations address each of the issues required by 37 C.F.R. § 1.705(b)(2):

(i) *The correct patent term adjustment (PTA) is 612 days.* This reflects 641 days of PTO delay, and 29 days of Applicant delay. The difference between the PTA set forth in the Notice of Allowance (541 days) and the correct adjustment (612 days) is 71 days.

09/03/2008 CKHLOK 00000014 502091 10750550
01 FC:1455 200.00 DA

Adjustment date: 09/03/2008 CKHLOK
06/16/2008 INTEFSW 00003104 502091 10750550
01 FC:1456 400.00 CR

We do not disagree with 641 days of PTO delay computed according to 37 C.F.R. § 1.702. Our Application for Corrected PTA results from PAIR's incorrect computation of Applicant delay under 37 C.F.R. § 1.704. The difference arises from PAIR's incorrect characterization of our Request for Continued Examination filed on October 8, 2007 as a Response After Final Rejection, as described more fully below.

(ii) The relevant dates for which an adjustment is sought are October 8, 2007 (the date of our RCE filing) until December 19, 2007 (the date that the RCE was entered in PAIR). We do not challenge the PTO's application of Rule 703(a)-(f) (resulting in a PTO delay of 641 days), as set forth in the Notice of Allowance.

(iii) This Application is not subject to a terminal disclaimer.

(iv) Rule 704 Delay.

We do not challenge the 29 days of Applicant delay for the Extension of Time granted from March 1 to March 30, 2007 to respond to the Non-Final Office Action granted from March 1-30, 2007.

We do, however, dispute the 71 day delay from October 8, 2007 until December 19, 2007 in that this delay was caused by a clerical error within the PTO, and not by any actual delay on our part. The pertinent details of this delay are described below.

Applicant electronically filed a Request for Continued Examination under 37 C.F.R. § 1.114 on October 8, 2007. As described in the accompanying documentation, this filing was described as a "Request for Continued Examination" at the time of submittal, was addressed to "Box RCE", and was accompanied by the requisite \$810 fee under 37 C.F.R. § 1.17(e). This filing was within the three-month shortened statutory period for response set in the Final Office Action mailed on July 9, 2008, so no Applicant delay should be assessed for this filing.

Although the PTO promptly debited our deposit account for the \$810 fee, our October 8, 2007 filing was apparently entered into the PAIR system as a Response under Rule 116 rather than an RCE under Rule 114. We became aware of this error when we received an Advisory Action dated November 15, 2007, and we promptly contacted Examiner Rego. At his suggestion, we spoke with USPTO Customer Support, who assured us that a trouble ticket had been opened, and that the matter would be promptly

Appl. No. 10/750,550
Reply to Final Office Action mailed on July 9, 2007
Docket. No.: 022.0028 (1615)

resolved. When no response was received after several weeks, we again spoke with Examiner Rego, who suggested that we submit an RCE Submittal Form PTO/SB/30 that could be entered into PAIR. We immediately complied with this request, and provided the requested form on December 19, 2007.

We note, however, that 37 C.F.R. § 1.114 does not require the filing of a Form PTO/SB/30, and our filing on October 8, 2007 was an entirely complete and timely response to the Final Office Action dated July 9, 2008. Hence, any delay following October 8, 2007 filing is a result of PTO error in processing the filing, rather than any failure on Applicant's part to engage in reasonable efforts to conclude processing. While we did submit the Form PTO/SB/30 on December 19, 2007, this was provided only as a convenience to the Examiner that allowed for correction of a clerical error in the PAIR database. The filing was not a substantive response, however, and was not required in view of our timely filing of the RCE on October 8, 2007.

As a result, we respectfully request that the patent term adjustment for this matter be 612 days, rather than the 541 days specified in the Notice of Allowance.

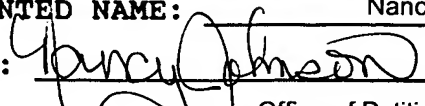

No official fee is believed to be due in connection with this Application, other than the fees addressed elsewhere in this filing. If, however, any additional fee is required to consider this response or to prevent abandonment of this application, please consider this as a request for any extension of time and/or as authorization to charge Deposit Account No. 50-2091 for any fee that may be due.

Respectfully submitted,
INGRASSIA FISHER & LORENZ

Dated: 13 June 2008

By: /BRETT A. CARLSON/
Brett A. Carlson
Reg. No. 39,928
(480) 385-5060

UNITED STATES PATENT & TRADEMARK OFFICE
Washington, D.C. 20231

REQUEST FOR PATENT FEE REFUND				
1 Date of Request: <u>09/02/08</u>		2 Serial/Patent # <u>10/750,550</u>		
3 Please refund the following fee(s):		4 PAPER NUMBER	5 DATE FILED	6 AMOUNT
	Filing			\$
	Amendment			\$
	Extension of Time			\$
	Notice of Appeal/Appeal			\$
X	Petition	IFW	06/13/08	\$ 400.00
	Issue			\$
	Cert of Correction/Terminal Disc.			\$
	Maintenance			\$
	Assignment			\$
	Other			\$
7 TOTAL AMOUNT OF REFUND			\$ 400.00	
8 TO BE REFUNDED BY:				
10 REASON:		Treasury Check		
X	Overpayment	X	Credit Deposit A/C #:	
	Duplicate Payment	9	<div style="display: flex; justify-content: space-around; padding: 0 10px;"> 50--2091 </div>	
	No Fee Due (Explanation):			
Correct fee is \$200 not \$400.				
11 REFUND REQUESTED BY:				
TYPED/PRINTED NAME: <u>Nancy Johnson</u>		TITLE: <u>Sr. Petitions Attorney</u>		
SIGNATURE: <u></u>		PHONE: <u>571-272-3219</u>		
OFFICE: <u>Office of Petitions</u>				
***** THIS SPACE RESERVED FOR FINANCE USE ONLY: *****				
APPROVED: <u></u>		DATE: <u>9/13/08</u>		

Instructions for completion of this form appear on the back. After completion, attach white and yellow copies to the official file and mail or hand-carry to: